

WILLIAM SOLOMON

IBLA 93-681

Decided November 27, 1996

Appeal from a decision by the California State Office, Bureau of Land Management, declaring placer mining claims null and void ab initio. CAMC 259564-CAMC 259567.

Affirmed.

1. Mining Claims: Land Subject to

A decision finding a mining claim located on lands patented without a reservation of minerals null and void ab initio will be affirmed on appeal. Although the statutory grant of alternative sections of public lands to the railroads in aid of construction of the transcontinental railroad did not include mineral lands, issuance of a patent to the lands ordinarily constituted a conclusive determination of the nonmineral character of the lands and thus a mining claim located on such patented lands is properly held null and void.

APPEARANCES: William Solomon, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

William Solomon has filed an appeal of a decision of the California State Office, Bureau of Land Management (BLM), dated August 6, 1993, declaring the King Solomon #1 through #4 placer mining claims (CAMC 259564-CAMC 259567) null and void ab initio. The basis for the decision was that the lands located were patented without a reservation of minerals under Railroad Grant Patent 993911.

Appellant filed copies of location notices for the claims on May 3, 1993, pursuant to the requirements of section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1994), and the implementing regulations at 43 CFR 3833.1-2. In his location notices, appellant asserted that he had located the King Solomon #1 (CAMC 259564) on April 16, 1993, and the King Solomon #2 (CAMC 259565), King Solomon #3 (CAMC 259566), and King Solomon #4 (CAMC 259567) on April 26, 1993. The claims are situated in sec. 17, T. 18 N., R. 10 E., Mount Diablo Meridian (MDM), in the mining district of Alleghany, Nevada and Sierra Counties, California.

By decision dated August 6, 1993, the California State Office, BLM, notified appellant that official BLM records show that the N $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of sec. 17, T. 18 N., R. 10 E., MDM, was patented, along with other lands, to the Central Pacific Railway Company under Railroad Grant Patent 993911. The patent issued pursuant to section 3 of the Act of July 1, 1862, Ch. 120, 12 Stat. 489, 492. ^{1/} Section 3 granted to the railroad alternate odd-numbered sections of vacant, unappropriated, and unreserved public lands on both sides of the railroad line, specifically providing that "all mineral lands shall be excepted" from the grant. 12 Stat. 492. The BLM decision noted that the patent issued January 8, 1927, without a reservation of minerals to the United States. Hence, the BLM decision held:

the lands were closed to the location and entry of mining claims on January 8, 1927, and remained closed on April 16, 1993 and April 26, 1993[,] the dates of the attempted locations. * * * Accordingly, the King Solomon #1 through #4 placer mining claims (CAMC 259564-67) are hereby declared null and void ab initio--without legal effect from the beginning.

(BLM Decision at 1-2).

On appeal, appellant argues that the 19th century Federal statutes granting lands to the railroads excluded mineral lands from the conveyances and that public land survey of the township approved December 23, 1874, shows "mineral lands" in the vicinity of sec. 17 where his claims were located. Hence, he asserts that the railroad patent was in error. Appellant further challenges the decision as based on an old survey as there are no "current surveys" of the lands, and requests a stay in this case pending a resurvey. Appellant has also submitted on appeal proposed amended land descriptions purportedly seeking to exclude railroad grant lands. Attached to the proposed amended notices is a statement of disclaimer of any interest in railroad grant lands. ^{2/}

The issue before the Board on appeal from the BLM decision is whether the lands described in the location notices for the King Solomon #1 through #4 placer mining claims (CAMC 2595664-CAMC 2595667) were open to mineral location on the 16th and 26th days of April 1993, when the claims were located. The lands embraced in appellant's locations were identified by

^{1/} Amended by Act of July 2, 1864, Ch. 216, 13 Stat. 356, 358 and Act of July 3, 1866, Ch. 159, 14 Stat. 79-80.

^{2/} Exhibit A, attached to each of appellant's amended notices of location reads as follows: "Excepted therefrom any real property lying within the boundaries of the Land described to Central Pacific Railroad Company in Patent No. 993911 dated July 1, 1862 and as [amended] July 2, 1864."

legal subdivisions of sec. 17. 3/ Reviewing the land descriptions on appellant's location notices, it appears from the record that the lands on which the claims were located are within the subdivisions identified by BLM above, which were patented without a reservation of minerals. 4/

[1] Mining claims may be located only on lands open to the operation of the Federal mining laws which are limited in their jurisdiction to "lands belonging to the United States." 30 U.S.C. § 22 (1994). Land conveyed without a reservation of minerals to the United States is not available for the location of mining claims and a mining claim located on such land after it is conveyed is null and void ab initio. Stacy B. Good, 133 IBLA 119, 120 (1995); Estate of Steve Pederson, 118 IBLA 210, 211-12 (1991); Jack T. Kelly, 113 IBLA 280, 282 (1990). With regard to the assertion that mineral lands were erroneously included in the patent and, hence, should be subject to location of mining claims, we note that this issue has been resolved. In Barden v. Northern Pacific Railroad, 154 U.S. 288, 329-32 (1894), the Supreme Court recognized that although the land office may not have always made the proper characterization of the lands involved in railroad grants, issuance of a patent was conclusive as to the status of the land absent direct proceedings voiding the patent. It noted:

It is true that the patent has been issued in many instances without the investigation and consideration which the public interest requires; but if that has been done without fraud, though unadvisedly by officers of the government charged with the duty of supervising and attending to the preparation and issue of such patents, the consequence must be borne by the government until by further legislation a stricter regard to their duties in that respect can be enforced upon them. * * * The grant, even when all the acts

3/ The statute authorizing placer mining claim locations upon the public lands provides that where the lands have been surveyed the exterior limits of the entry shall conform to the legal subdivisions of the public lands. 30 U.S.C. § 35 (1994). Conformity to the survey subdivisions is not a requirement, however, provided that location notices include "such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim." 30 U.S.C. § 28 (1994). See United States v. Webb, 132 IBLA 152, 174 (1995).

4/ The land descriptions on appellant's location notices with respect to the King Solomon #3 are somewhat ambiguous due in part to imprecise notation of subdivisions caused by lack of punctuation and by the filing of location notices for the same claim in two counties bearing slight variations in the description. It appears, however, that the claim was in fact located on patented land. Although appellant's proposed "amended" land descriptions have not been adjudicated and hence are outside the scope of this appeal, we note that these land descriptions (one of which, i.e., King Solomon #4, also contains two conflicting descriptions) are also located on patented lands.

required of the grantees are performed, only passes a title to non-mineral lands; but a patent issued in proper form, upon a judgment rendered after a due examination of the subject by officers of the Land Department, charged with its preparation and issue, that the lands were non-mineral, would, unless set aside and annulled by direct proceedings, estop the government from contending to the contrary, and as we have already said in the absence of fraud in the officers of the department, would be conclusive in subsequent proceedings respecting the title.

154 U.S. at 330-31; see Stacy B. Good, *supra* at 121; Joseph A. Barnes, 78 IBLA 46, 55-56, 90 I.D. 550, 555 (1983), *aff'd*, Barnes v. Hodel, 819 F. 2d 250 (9th Cir. 1987), *cert. denied*, 484 U.S. 1005 (1988). Accordingly, appellant's mining claims were properly held null and void ab initio.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed and the request for a stay is denied.

C. Randall Grant, Jr.
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge